

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**FURTHER INQUIRY INTO ISSUES RELATED TO  
MOBILITY FUND PHASE II**

**COMMENTS OF  
MESCALERO APACHE TELECOM, INC.**

December 21, 2012

## INTRODUCTION

Mescalero Apache Telecom, Inc. (“MATI”) hereby submits its Comments to the Federal Communications Commission (“FCC” or “Commission”) in response to the Further Inquiry into issues related to Mobility Fund Phase II (*Further Inquiry*).<sup>1</sup>

MATI was formed for the purpose of bringing modern communications services to the people of the Mescalero Apache Reservation. MATI serves the Mescalero Apache Reservation, an area consisting of approximately 720 square miles in south central New Mexico. MATI, as a wholly owned enterprise of the Mescalero Apache Tribe, undertook the risky venture of serving a historically underserved and economically disadvantaged area in order to afford the Mescalero Apache people with access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, and thereby increase the tribe’s access to education, commerce, government, and public services. MATI, by taking the steps it did, also helped bridge the physical distances between those living on the Reservation and the emergency, medical, employment, and other services that they may need to improve the standard of living on the Reservation. MATI continues its commitment to provide service to the Reservation, which now, as with the rest of the United States, must include investment in broadband capable services. In order to bring broadband-enabled services to more residents of the Mescalero Apache tribal area, and on a rapid basis, MATI in the planning stages of a wireless offering as well as its current wireline offering.

MATI offers these comments in order to inform the Commission as to the ongoing difficulties with accomplishing the goals as adopted in the National Broadband Plan<sup>2</sup>, as well as the ICC/USF Reform Order<sup>3</sup>, in Tribal areas, and how simple changes to Mobility Fund Phase II procedures could assist in addressing these difficulties.

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<sup>1</sup> WC Docket No. 10-90, In the Matter of Connect America Fund; WT Docket No. 10-208, In the Matter of Universal Service Reform – Mobility Fund, *Public Notice*, DA 12-1853, released November 27, 2012.

<sup>2</sup> See *Connecting America: The National Broadband Plan*, rel. March 16, 2010 (*NBP*)

<sup>3</sup> Report and Order and Further Notice of Proposed Rulemaking In the Matter of Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC

## **I. THE COMMISSION'S USF REFORMS WILL NOT ACCOMPLISH ADOPTED BROADBAND GOALS IN TRIBAL AREAS**

As laudable as the Commission's recently-adopted broadband-related goals<sup>4</sup> are, the reforms adopted in regards to universal service fund (USF) and intercarrier compensation (ICC) will not accomplish those goals as they relate to Tribally-owned carriers and the Tribal areas they serve. For many Tribally-owned small rural local exchange carriers (RLEC), the USF and ICC reforms adopted only serve to decrease support, in many instances without adequate reason or substantiation, and therefore make it *more* difficult, and in some cases impossible, to meet broadband investment goals. Clearly, any action taken by the Commission that results in lower levels of support, in conjunction with the added broadband-related goals and responsibilities, places RLECs, including MATI, in nearly impossible situations.

As an example of reforms that are counterproductive to achievement of the Commission's broadband deployment and adoption goals, the decision to limit certain legacy support amounts based on a quantile regression statistical analysis<sup>5</sup> resulted, and will in all likelihood continue to result, in decreases in support with no commensurate decrease in obligations. Indeed, as noted above, obligations have increased as support is decreasing. This is just one example of Commission decisions being in conflict with its stated goals.

In addition to USF reform decisions negatively impacting RLECs, such as MATI, and their ability to continue and advance the availability of broadband-enabled services, the Commission in large part ignored the unique position occupied by Tribally-owned wireline carriers. MATI, by virtue of being a wholly owned enterprise of the Mescalero Apache Tribe, is in a position of unique importance when it comes to furthering the national goal, as specified by the Commission, of universal broadband availability on Tribal lands. MATI's existence is for the sole benefit of the residents and businesses located on the Mescalero Apache lands, and it is

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Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208, released November 18, 2011. (*ICC/USF Order*)

<sup>4</sup> See e.g., NBP at 7-11 and *ICC/USF Order* at 46-59

<sup>5</sup> *ICC/USF Order* at 210

therefore up to MATI to ensure the national broadband goals are met. Unfortunately, in MATI's view, the Commission largely ignored Tribally-owned wireline carriers, their importance in maintaining and advancing universal service in Tribal areas, and the resources necessary to accomplish national goals. As a result, MATI is struggling to find new ways to meet broadband goals while at the same time ensuring its survival into the future - survival that is vital to the Mescalero Apache tribe, its people, and its economic well-being. One way that MATI is considering relates to the subject matter at hand - mobile broadband services. Thus far, MATI has secured spectrum sufficient to provide mobile broadband services and necessary to participate in the Mobility Fund Phase II process. MATI has also completed a business and deployment plan to deploy mobile broadband throughout the Mescalero Apache reservation, given that adequate support is made available.

Although it has been stated before<sup>6</sup>, it bears repeating: the NBP correctly noted that *"Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding."*<sup>7</sup> While MATI has made remarkable progress in deploying broadband-capable facilities and services to its customers<sup>8</sup>, work remains to be done, and perhaps more importantly, the Mescalero Apache people deserve to know their communications service provider will be around in the long term. In MATI's view, the Commission thus far has not accomplished either goal - neither the continuation nor the advancement of broadband services is ensured under the reformed universal service programs.

## **II. MOBILITY PHASE II RULES PRESENT A BARRIER FOR SMALL, TRIBALLY OWNED CARRIERS**

The Commission adopted the Mobility Fund Phase II support mechanism in order to provide ongoing support for broadband mobile services, to be targeted where such service is not available today.<sup>9</sup> In addition, the Commission established a separate, ongoing support amount

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<sup>6</sup> MATI Reply Comments, filed in WC Docket No. 10-90, et al, (February 17, 2012) at 5

<sup>7</sup> NBP at 152

<sup>8</sup> MATI Comments, filed in WC Docket 10-90, et al, (January 18, 2012) at 3

<sup>9</sup> ICC/USF Order at 493

“to address the special circumstances of Tribal lands.”<sup>10</sup> The Commission has properly recognized that “encouraging tribal-centric solutions to the communication needs of Tribal lands can be particularly advantageous.”<sup>11</sup> Thus, one of the goals for Mobility Fund Phase II should be to ensure the barriers facing Tribally-owned companies are minimized to the greatest extent possible.

Throughout the process leading up to, and subsequent to, adoption of the *ICC/USF Order*, the Commission has attempted to recognize the value that Tribally-owned carriers have in ensuring mobile broadband is available to Native Americans. For example, MATI recognizes that the Commission adopted bidding credits, in regards to Mobility Fund Phase I CAF, for Tribally-owned carriers<sup>12</sup>, and proposes to do so again for Mobility Fund Phase II.<sup>13</sup> The Commission also started a proceeding for the express purpose of improving communications for Native Nations by promoting greater utilization of spectrum on Tribal lands.<sup>14</sup> However, these attempts have fallen short of their desired goals.

In the *ICC/USF Order*, the Commission proposed to largely utilize the same rules for Mobility Fund Phase II participation, and most importantly to MATI, the post-auction process, as were used for Mobility Fund Phase I. Among those rules is the requirement that all winning bidders obtain an irrevocable, stand-by, Letter of Credit (LOC) from a bank deemed acceptable to the Commission.<sup>15</sup> While MATI is able to work within most of the remainder of Mobility Fund Phase II requirements, the LOC requirement has proved to be an insurmountable barrier to participation in the Mobility Fund Phase II process.

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<sup>10</sup> *Id.*, at 494

<sup>11</sup> WC Docket No. 10-90, et al., Fourth Order on Reconsideration (July 18, 2012) at 29

<sup>12</sup> *ICC/USF Order* at 490

<sup>13</sup> *Id.*, at 1166

<sup>14</sup> WT Docket No. 11-40, In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands, Notice of Proposed Rulemaking (March 3, 2011). *See also* July 19, 2012 Ex Parte filing by the National Congress of American Indians (at 2) “It has been well over a year since the FCC released its Notice of Proposed Rulemaking on this issue, and many tribes across the country are still waiting for the promulgation of these important rules to increase tribal access to spectrum.” MATI notes that this proceeding has not been finalized, nor have any Commission rules been issued.

<sup>15</sup> *ICC/USF Order* at 444

### **III. THE COMMISSION'S RULES, IN TOTAL, MUST MINIMIZE MOBILITY FUND PHASE II PARTICIPATION BARRIERS FOR TRIBALLY-OWNED CARRIERS**

MATI has been unsuccessful in obtaining any interest by a Commission-approved bank for providing a LOC as required by the Commission's Mobility Fund Phase II proposed rules. As has been stated previously by other parties<sup>16</sup>, MATI does not have an ongoing business relationship with any of the approved banks, and financing in large part has been obtained from the Rural Utilities Service (RUS), which is not an approved bank for purposes of the LOC requirement. Thus, the LOC requirement is serving as a barrier to MATI successfully participating in the Mobility Fund Phase II process, and thus is potentially depriving the Mescalero Apache reservation with a service deemed by the Commission to be worthy of universal service support.

The Commission adopted the LOC rules as part of the post-auction long-form application process in order to "protect the government's interest in the funds it disburses"<sup>17</sup> and to ensure Mobility Fund recipient performance of the Commission-adopted public interest obligations.<sup>18</sup> In essence, the Commission appears to be concerned about companies receiving Mobility Fund Phase II support, and then either filing for bankruptcy, or not fulfilling the obligations for recipients of such funding.<sup>19</sup>

For MATI, and indeed other rural carriers<sup>20</sup>, the LOC requirement is proving to be onerous and unduly burdensome. Furthermore, an LOC should not be required for a Tribally-owned carrier such as MATI, who for over a decade has been a recipient of federal USF support, and RUS funding, and in every way, shape, or form has met and exceeded every Commission expectation for deployment of quality universal service at affordable rates. In essence, the LOC requirement

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<sup>16</sup> See e.g., Comments (January 18, 2012) and Reply Comments (February 17, 2012) of the Blooston Rural Carriers in WC Docket No. 10-90, et al (Blooston Comments and Reply Comments)

<sup>17</sup> *ICC/USF Order* at 447

<sup>18</sup> *Id.*, at 446

<sup>19</sup> Performance obligations include such things as minimum bandwidth requirements and collocation and data roaming obligations

<sup>20</sup> See Blooston Comments at 17 and Blooston Reply Comments at 10

is a solution in search of a problem in MATI's case, and in the cases of other rural carriers interested in participating in the Mobility Fund Phase II process.

Based on the above discussion, MATI believes the Commission should waive the Mobility Fund Phase II LOC requirement for established rural carriers seeking to participate in the auction, or at the very least waive the requirement for Tribally-owned carriers. The LOC requirement presents an insurmountable barrier for MATI and is not in the public interest.

### **CONCLUSION**

MATI appreciates the Commission's attempts to recognize the unique position Tribally-owned carriers could potentially occupy in regards to furthering national broadband mobility goals through the Mobility Fund Phase II process. However, at least one requirement - the LOC rule - serves as a major barrier to participation for rural carriers such as MATI. In order to ensure Tribal areas, and in particular those served or potentially to be served by Tribally-owned carriers, the Commission should waive the LOC requirements for all rural carriers, or at the very least, those that are Tribally-owned.

Respectfully Submitted,

Godfrey Enjady  
Mescalero Apache Telecom, Inc.

December 21, 2012